

Service Date: June 10, 1992

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

\* \* \* \* \*

IN THE MATTER of Information	)	UTILITY DIVISION
Requests of Sprint Communications	)	
Company L.P.	)	ORDER NO. 5623

PROTECTIVE ORDER

On April 20, 1992 the Montana Public Service Commission (Commission) received a Motion for Protective Order from Sprint Communications Company L.P. (Sprint). Sprint moved to protect as trade secret and confidential a "Right of Way Agreement" (Agreement) entered into by and between Sprint and Burlington Northern Railroad Company (Burlington). On January 10, 1992 the Commission staff had issued a number of information requests which would require Sprint to submit the Agreement in response, particularly, to PSC-4. Pending this Protective Order, Sprint requested that the Commission withhold the Agreement from public disclosure for ninety (90) days pursuant to < 69-3-105, MCA. Sprint asserted that the Agreement contains confidential information which could be used by others to obtain economic value, therefore constituting a trade secret warranting protection against public disclosure. This information relates to data requests pertaining to the construction of Sprint's fiber optic cable ("Fogwire") which runs from Washington through Montana to Minnesota. The Commission issued a proposed protective order on May 8, 1992 to become final on or after May 26, 1992, subject to changes as requested. The Commission now issues the following order.

NOW THEREFORE IT IS ORDERED that Sprint's Motion for Protective Order is granted. This order governs the data or information submitted in the course of the information data requests claimed to be a trade secret or otherwise confidential. This order remains in effect

throughout this investigation and thereafter, unless and until the Company has announced that the information need not remain under the cover of this Order or upon successful challenge to its confidentiality.

1. (a) Confidential Information. All documents, data, information, studies and other materials furnished pursuant to any interrogatories or requests for information, subpoenas, depositions, or other modes of discovery, or pursuant to Commission order, that are claimed to be of a trade secret, privileged or confidential nature shall be furnished pursuant to the terms of this Order. All persons accorded access pursuant to this Order shall treat the information as constituting trade secret, confidential or privileged commercial and financial information ("Confidential Information"), and shall neither use nor disclose the Confidential Information other than for the purpose of this investigation or any proceeding agreed to by the parties, and solely in accordance with this Order. Sprint shall mark and/or stamp all Confidential Information "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER" and shall submit the information to the Commission under seal and on yellow paper for easy identification for filing purposes.
- (b) Use of Confidential Information and Persons Entitled to Review. All persons who may be entitled to receive, or who are accorded access to any Confidential Information by reason of this Order shall neither use nor disclose the Confidential Information other than for purposes of preparation for and conduct of this Commission Investigation or other proceeding as agreed upon by Sprint and Montana Consumer Counsel. The Agreement made available to the Commission shall be given to the Commission and any member of its staff and to the Consumer Counsel and any member of his staff.
- (c) Nondisclosure Agreement. Before disclosure of Confidential Information, authorized counsel shall deliver a copy of this Order to its designated expert(s), and both counsel and the expert(s) shall agree in writing to comply with and be bound by this Order. Persons obtaining this information pursuant to this Protective Order shall not disclose the information to any person who has not signed a nondisclosure agreement in the form attached hereto and incorporated herein as Exhibit "A." Exhibit "A" shall require the person(s) receiving access to Confidential Information to certify in writing that they have read and have consented to be bound by the Protective Order. The agreement shall contain the signatory's full name, permanent address and employer, and the name of the party with whom the signatory is associated. Such agreement shall be delivered to counsel and a copy delivered to the Commission.

- (d) Delivery of Documentation. Confidential Information will be marked as such and delivered to counsel.
- 2. Challenge to Confidentiality.
  - (a) This Order establishes a procedure to expedite handling of information claimed to be confidential; it shall not be construed as an agreement or ruling on the confidentiality of any such document.
  - (b) If the parties hereto cannot agree that the protected information is trade secret, confidential or privileged commercial and financial information, the objecting party shall submit the objection(s) to the Commission for review pursuant to this Order. The Commission will enter an order resolving the issue.
  - (c) Any party upon ten (10) days prior notice may move or petition the Commission to remove from protection of this order and/or the sealed record specified documents designated as Confidential Information or otherwise accepted into the sealed record and to place these documents into the public record. A hearing examiner and/or the Commission shall determine a challenge of Confidential Information after proceedings in camera in which only those persons accorded access to the Confidential Information may be present. The record of such in camera hearings shall be marked CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER." It shall be transcribed only upon agreement by the parties or Order of the Hearing Examiner or the Commission. This transcription shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Order. Parties may agree to release the transcription from the restrictions of this Order, or after notice and hearing, the Hearing Examiner or the Commission may issue an order making the transcription public. If the Commission issues an order removing any information from protection under this Order, the affected party may request nondisclosure and/or nonuse in the public record for five (5) business days, to enable the affected party to seek a stay or other relief. The Commission shall grant such a request, and parties shall not publicly disclose or use this information during this time period.
- 3. (a) Receipt into Evidence. Evidence of Confidential Information in any agreed upon proceeding shall be received under seal. At least ten (10) days before use of any Confidential Information as evidence, the party intending to use such Information shall notify the providing party. The requesting party and the providing party shall make a good faith effort to reach an agreement to use the information in a manner which will not reveal its trade secret, confidential or proprietary nature. If such efforts fail, the providing party shall separately identify, within five (5) business days, which portions, if any, of the documents containing Confidential Information to be offered or referenced on the record shall be placed in the sealed record. Only one (1) copy of documents designated by the

providing party to be placed in the sealed record shall be made and only for that purpose. Otherwise, parties shall make only general references to Confidential Information in any agreed upon proceedings.

- (b) Seal. While in the custody of the Commission, materials subject to this Order shall be marked "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER," and due to their trade secret nature, they shall not be considered as records in the possession or retained by the Commission within the meaning of the open meetings or public records statutes.
- (c) In Camera Hearing. Any Confidential Information which must be orally disclosed to be placed in the sealed record in any agreed upon proceeding shall be offered in an in camera hearing, attended only by persons authorized to have access to the Information under this Order. Similarly, cross-examination on or substantive reference to Confidential Information, as well as that portion of the record containing references thereto, shall be marked and treated as provided herein.
- (d) Appeal. Sealed portions of the record in this proceeding may be forwarded to any court of competent jurisdiction on appeal in accordance with applicable rules and regulations, but under seal as designated herein for the information and use of the Court.
- (e) Return. Unless otherwise ordered, Confidential Information shall remain under seal, shall continue to be subject to the protective requirements of this Order, and shall be returned to counsel for Sprint within 30 days after final settlement or conclusion of this matter including administrative or judicial review.

4. Use in Pleadings, Briefs, etc. Where reference to Confidential Information in the sealed record is required in pleadings, cross-examination, briefs, argument or motions, it shall be by citation or title or exhibit number or by some other nonconfidential description. Any further use of or substantive references to Confidential Information shall be placed in a separate section of the pleading or brief and submitted to the Hearing Examiner or the Commission under seal. This sealed section shall be served only on counsel of record (one copy each) who have signed an Exhibit "A." All the protections granted in this Order apply to materials prepared and distributed under this paragraph.

- 5. (a) Use in Decisions and Orders. The Commission will refer to Confidential Information in only a general or conclusionary form and will avoid reproduction in any decision of Confidential Information to the greatest possible extent. If necessary for a determination in any agreed upon proceeding to discuss Confidential Information other than in a general or conclusionary form, it shall be placed in a separate section of the Order or Decision under seal. This sealed section shall be served only on counsel of

record (one copy each) who have signed an Exhibit "A." Counsel for other parties shall receive the cover sheet to the sealed portion and may review the sealed portion on file with the Commission once they have signed an Exhibit "A."

- (b) Summary for Record. If deemed necessary by the Commission, Sprint shall prepare a written summary of the Confidential Information referred to in the Decision or Order of any agreed upon proceeding to be placed on the public record.

6. Segregation of Files. All Confidential Information filed with the Commission will be sealed by the Commission, segregated in the files of the Commission, and withheld from inspection by any person not bound by the terms of this Order, unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties or, after notice to the parties and hearing, pursuant to the Order of the Commission and/or final order of a Court having jurisdiction. All written Confidential Information coming into the possession of the Consumer Counsel under this order may be retained in its office files, but shall be withheld from inspection by others, except for staff, counsel and experts, unless released by the Commission and/or a final order of a court under this paragraph 6 and subject always to the terms of paragraph 7 of this Order.

7. Preservation of Confidentiality. All persons entitled to obtain any Confidential Information by reason of this Order shall neither use nor disclose the Confidential Information for purposes of business or competition, or any purpose other than preparation for and conduct of the investigation or agreed upon proceedings, and then solely as provided herein, and shall take reasonable precautions to keep the Confidential Information secure, pursuant to this Order.

8. Reservation of Rights. The parties affected by the terms of this Protective Order further retain the right to question, challenge, and object to the admissibility of data, information, studies and other matters furnished under the terms of this Protective Order in response to interrogatories, requests for information or cross-examination on the grounds of relevancy or materiality.

This Order shall in no way constitute any waiver of the rights of any party herein to contest any assertion or finding of trade secret, confidentiality or privilege, and to appeal any such determination of the Commission or such assertion by a party.

9. Amendment or Modification. The Commission retains jurisdiction of this matter and may alter or amend these provisions as it deems appropriate, upon motion by an appropriate party and reasonable notice.

Done and Dated this 1st day of June, 1992 by a vote of 4-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

---

DANNY OBERG, Chairman

---

WALLACE W. "WALLY" MERCER, Vice Chairman

---

BOB ANDERSON, Commissioner

---

TED C. MACY, Commissioner

ATTEST:

Ann Peck  
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.

EXHIBIT "A"

I have reviewed the Protective Order No. 5623, dated June 1, 1992, and agree to be bound by the terms and conditions of such order.

---

Signature

---

Typed or Printed Name

---

Residence Address

---

Employer or Firm

---

Business Address

---

Party

---

Date